

REMARKS

Status of the Claims

The pending Office Action addresses claims 1 and 4-25, however claims 7-10 and 20-21 are withdrawn from consideration. Remaining claims 1, 4-6, 11-19, and 22-25 stand rejected.

Applicant thanks the Examiner for the telephone interview on October 2, 2009 with the Applicant's undersigned representative.

Amendments to the Claims

Claim 11 is cancelled. Applicant reserves the right to pursue any form of cancelled claims in a continuation application.

Claim 1 is amended to include the subject matter of claim 12, which is cancelled, and also to recite that the top and bottom portions *are a singular piece*, that the bore is *located between the recess and the first end*, and that the inferior and superior surfaces are configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end when the locking mechanism is disposed *and fully distally inserted* in the bore extending through the top and bottom portions.

Claim 6 is amended to reflect the amendment of claim 1.

Claim 23 is amended to recite that the top and bottom portions *are a singular piece*, that the bores are configured to receive a locking mechanism for locking the top and bottom portions in the closed position *when the locking mechanism is fully distally inserted through the bores*, and that *the top and bottom portions are biased to the open position such that a force greater than the biasing force must be applied to move the top and bottom portions to the closed position*.

Support for these amendments can be found throughout the specification and drawings, for example in paragraphs [0047]-[0050] and Figures 1B, 1C and 1E. No new matter is added.

Rejections Pursuant to 35 U.S.C. § 102

Kelley

Claims 1, 4-6, 11-16, 18, 19, and 22-24 are rejected pursuant to 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 1,234,039 ("Kelley"). Applicant respectfully disagrees.

In relevant part, independent claims 1 and 23 recite that the top and bottom portions are a singular piece. The Examiner agreed in the October 2, 2009 interview that Kelley fails to disclose this feature.

Claims 1 and 23, as well as claims 4-6, 11-16, 18, 19, 22, and 24 which depend therefrom, therefore distinguish over Kelley and represent allowable subject matter.

Andersen

Claims 1, 4-6, 11-16, 18, and 22-24 are rejected pursuant to 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Publication No. 2002/0000027 ("Andersen"). Applicant respectfully disagrees.

In relevant part, independent claim 1 recites a recess, a bore located between the recess and the first end, and that the inferior and superior surfaces are configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end when the locking mechanism is disposed and fully distally inserted in the bore extending through the top and bottom portions. Also in relevant part, independent claim 23 recites that the inferior surface of the top portion and the superior surface of the bottom portion tapering away from one another toward the first terminal end along an entire length thereof between the recess and the first terminal end when the top and bottom portions are in the closed position and that the bores are configured to receive a locking mechanism for locking the top and bottom portions in the closed position when the locking mechanism is fully distally inserted through the bores. Andersen fails to disclose such features.

On pages 4 and 5 of the Office Action, channels 36, 38 of Andersen are identified as a "recess" and bores 44, 48 are identified as a "bore." However, it is clear from Andersen's Figure 2 that the bores 44, 48 are not located between the channels 36, 38 and the first end as required by claim 1.

Moreover, in Andersen, the inferior and superior surfaces of the jaws 14, 16 are *not* configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end when the locking mechanism is disposed and fully distally inserted in the bore extending through the top and bottom portions as required by claim 1. The inferior and superior surfaces of the jaws 14, 16 are similarly *not* configured to taper away from one another toward the first terminal end along an entire length thereof between the recess and the first terminal end when the top and bottom portions are in the closed position when the locking mechanism is fully distally inserted through the bores as required by claim 23. Andersen is specifically designed to do otherwise.

When the thumbscrew 40 is disposed and fully inserted in the bores 44, 48 such that the teeth 58 on the bottom of the thumbscrew's knob 50 engage corresponding teeth 60 on the upper jaw 14, protruding teeth 30 on the upper jaw 14 fit into sockets 32 on the lower jaw 16. "The jaw portions [14, 16] can thus be forced together until their *inner surfaces bear flat against one another*, with individual teeth [30] being received in the corresponding sockets [32]." Andersen, para. [0027]. (Emphasis added.) Thus, rather than tapering away from one another as required by claims 1 and 23, the surfaces flatly contact each other.

Claims 1 and 23, as well as claims 4-6, 11-16, 18, 22, and 24 which depend therefrom, therefore distinguish over Andersen and represent allowable subject matter.

Rejections Pursuant to 35 U.S.C. § 103

Kelley

Claims 17 and 25 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Kelley. Applicant respectfully disagrees. As indicated above, Kelley fails to disclose claims 1 and 23. Accordingly, claims 17 and 25, which depend from claims 1 and 23 respectively, distinguish over Kelley and represent allowable subject matter.

Andersen

Claims 17 and 25 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over Andersen. Applicant respectfully disagrees. As indicated above, Andersen fails to disclose claims 1 and 23. Accordingly, claims 17 and 25, which depend from claims 1 and 23 respectively, distinguish over

Andersen and represent allowable subject matter.

Kraus in view of Walulik

Claims 1, 4-6, 11, 13-16, 18, 19, and 22-24 are rejected pursuant to 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,746,741 ("Kraus") in view of U.S. Patent No. 6,277,119 ("Walulik").

As indicated above, the subject matter of claim 12 has been incorporated into claim 1, and a similar recitation has been added to claim 23, thereby making the Examiner's rejection moot.

Claims 1 and 23, as well as claims 4-6, 11, 13-16, 18, 19, 22, and 24 which depend therefrom, therefore distinguish over Walulik and Kraus, taken alone or in combination, and represent allowable subject matter.

U.S. Patent Nos. 6,872,209 and 5,947,965

In the October 2, 2009 interview the Examiner brought U.S. Patent No. 6,872,209 ("Morrison") and U.S. Patent No. 5,947,965 ("Bryan") to Applicant's attention.

In relevant part, independent claim 1 recites that the inferior and superior surfaces are configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end *when the locking mechanism is disposed and fully distally inserted in the bore* extending through the top and bottom portions. Also in relevant part, independent claim 23 recites that the inferior surface of the top portion and the superior surface of the bottom portion tapering away from one another toward the first terminal end along an entire length thereof between the recess and the first terminal end when the top and bottom portions are in the closed position and that the bores are configured to receive a locking mechanism for locking the top and bottom portions in the closed position when the locking mechanism is fully distally inserted through the bores. Morrison and Bryan each fail to disclose such a feature.

Morrison

In Morrison, the inferior and superior surfaces of the arms of the clevis 3 are *not* configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end when the locking mechanism is disposed and fully distally inserted in the bore extending

through the top and bottom portions as required by claim 1. The inferior and superior surfaces of the arms of the clevis 3 are similarly *not* configured to taper away from one another toward the first terminal end along an entire length thereof between the recess and the first terminal end when the top and bottom portions are in the closed position when the locking mechanism is fully distally inserted through the bores as required by claim 23. Morrison is specifically designed to do otherwise.

When the bolt 5 is disposed and fully inserted in the eyes 17, 18, the ridges 21 on the connection surface 20 of the clevis 3 interlock with corresponding ridges 27 on the bolt 5 as illustrated in Figures 1-3A. In such a position, inferior and superior surfaces of the arms of the clevis 3 clearly do not taper away from one another but are *parallel* to one another. The other embodiments disclosed in Morrison are specifically indicated as functioning similar to this first embodiment of Figures 1-20. See Morrison, col. 7, line 20 to col. 8, line 29. Indeed, Morrison states that the “opposing internal faces 103.1 and 103.2 are drawn closer to one another by tightening of screw 80. Referring to FIG. 42, these opposing faces are non-parallel to each other when clevis 103 is in a free, unassembled state,” while also specifically stating that this embodiment otherwise function similar to the embodiment of Figures 1-20. *Id.* at col. 8, lines 23-26; col. 7, lines 45-52. Thus, rather than tapering away from one another as required by claims 1 and 23, the surfaces flatly contact each other.

Bryan

In Bryan, the inferior and superior surfaces of the jaws 61, 63 are *not* configured to taper away from one another toward the first end along an entire length thereof from the recess to the first end when the locking mechanism is disposed and fully distally inserted in the bore extending through the top and bottom portions as required by claim 1. The inferior and superior surfaces of the jaws 61, 63 are similarly *not* configured to taper away from one another toward the first terminal end along an entire length thereof between the recess and the first terminal end when the top and bottom portions are in the closed position when the locking mechanism is fully distally inserted through the bores as required by claim 23. Bryan is specifically designed to do otherwise.

When the bone screw 50 is disposed and fully inserted in the throughbore 66 and threads 54 of the bone screw 50 engage with the threads 67 in the lower jaw 63, tightening the bone screw 50 “will simultaneously engage bone tissue (not shown) while forcing the closing of upper jaw 61 *downwardly against* lower jaw 63.” Bryan, col. 9, lines 25-36. (Emphasis added.) Thus, rather than tapering away

from one another as required by claims 1 and 23, the surfaces flatly contact each other.

Conclusion

Applicant submits that all claims are in condition for allowance, and allowance thereof is respectfully requested. Applicant's amendment of the claims does not constitute a concession that the claims are not allowable in their unamended form. The Examiner is encouraged to telephone the undersigned attorney for Applicant if such communication is deemed to expedite prosecution of this application. Applicant reminds the Examiner that in the October 2, 2009 interview the Examiner agreed to telephone Applicant's representative to discuss the claims if an Advisory Action is issued in response to the present filing.

No extension of time is believed to be due with this filing. In the event that a petition for an extension of time is required to be submitted at this time, Applicant hereby petitions under 37 CFR 1.136(a) for an extension of time for as many months as are required to ensure that the above-identified application does not become abandoned.

No fee is believed to be due with this filing. The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 141449, under Order No. 101896-242.

Dated: October 5, 2009

Respectfully submitted,

By: /Christina M. Sperry/
Christina M. Sperry
Registration No.: 47,106
NUTTER MCCLENNEN & FISH LLP
World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2604
(617) 439-2394
(617) 310-9394 (Fax)
Attorney for Applicant